



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

NOV 18 2013

Michael B. Trister, Esq.
Trister, Ross, Schadler, & Gold, PLLC
1666 Connecticut Ave., NW, Fifth Floor
Washington, DC 20009

RE: MUR 6664

Dear Mr. Trister:

On October 12, 2012, the Federal Election Commission ("Commission") notified your clients, Wisconsin Jobs Now!, Inc. and Service Employees International Union, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On November 7, 2013, the Commission found, on the basis of information provided in the complaint and by your clients, that there is no reason to believe your clients violated 2 U.S.C. § 441b(a). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which more fully explains the Commission's finding, is enclosed.

If you have any questions, please contact Margaret Howell, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in dark ink, appearing to read "William Powers", is written over a horizontal line.

William Powers
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 RESPONDENTS: Wall for Congress and MUR: 6664
6 Florence Magnuson in her
7 official capacity as treasurer
8 James Wall
9 Service Employees International Union
10 Wisconsin Jobs Now!, Inc.
11 Paula Zellner
12

13 **I. GENERATION OF MATTER**

14 This matter was generated by a complaint filed by Ron Tusler. See 2 U.S.C.
15 § 437(g)(a)(1).

16 **II. FACTUAL AND LEGAL ANALYSIS**

17 **A. Factual Background**

18 Wall for Congress ("Wall Committee" or "Committee") is the principal campaign
19 committee of James Wall, an unsuccessful 2012 candidate for the U.S. House of Representatives
20 from Wisconsin's 8th Congressional district. Its treasurer is Florence Magnuson. Wall and his
21 Committee filed Statements of Candidacy and Organization on October 14, 2011.

22 Service Employees International Union ("SEIU") is an international labor organization
23 comprising two million members. See <http://www.seiu.org/our-union/>. Wisconsin Jobs Now!,
24 Inc. ("Wisconsin Jobs Now") is a non-stock corporation established in April 2011 that describes
25 itself as a "community-based, non-profit organization fighting to bring economic justice to our
26 communities." See <http://wisconsinjobsnow.org/about-us/>. The Complaint describes Wisconsin
27 Jobs Now as a "subsidiary" of SEIU, and the two organizations filed a joint Response. Compl.
28 at 1; see also Wisconsin Jobs Now/SEIU Resp. (Nov. 30, 2012). Wisconsin Jobs Now's

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Executive Director, however, attests that, "SEIU has made contributions to the work of WJN, but . . . has no connection to the[se] events." Michael Lauer Decl. ¶ 3 (Dec. 11, 2012).

Paula Zellner served as Wisconsin Jobs Now's political director from May 2011 until March 4, 2012. Wisconsin Jobs Now/SEIU Resp. at 1; *id.*, Ex. A; Paula Zellner Aff. ¶ 3 (Jan. 15, 2013). As part of her responsibilities to "arrang[e] events and other educational activities concerning issues of concern to working families," Zellner organized a protest on January 5, 2012, outside of a fundraiser for a Wisconsin state representative hosted at a private residence that featured Congresswoman Paul Ryan as a guest speaker. Wisconsin Jobs Now/SEIU Resp. at 2; Compl., Exs. 6, 13. The protesters, who carried trays of champagne and wore top hats, fur coats, monocles, and pearls, shouted "[r]ich should pay more taxes!" and held signs displaying "messages about the 1%." Compl., Exs. 6, 13.

In early February 2012, Zellner notified her supervisor, Wisconsin Jobs Now Executive Director Michael Lauer, that she would be leaving Wisconsin Jobs Now to take a position with the Wall Committee. Lauer Decl. ¶ 6. Zellner states that she began working as the campaign manager for the Wall Committee on March 5, 2012. Zellner Aff. ¶ 4. Several documents included with the Complaint, however, suggest that she began working for the Wall Committee before March 5 while also being employed by Wisconsin Jobs Now beyond March 5. These documents purport to show that:

- Zellner made a contribution to the Wall Committee on October 3, 2011, as reflected in the Wall Committee's Amended 2011 Year-End Report disclosing this contribution, which lists Zellner's occupation and employer as "Campaign Manager" for "Wall for Congress." Compl. at 2; *see also* Amended 2011 Year-End Report.
- Zellner is listed as the point of contact on Wall Committee press releases dated October 5, 2011, and January 18, February 2, February 14, and February 29, 2012. Compl. at 2; *id.*, Exs. 9, 10.

- 1 • The Wall Committee paid Zellner while she worked for Wisconsin Jobs Now, as shown
2 by the Wall Committee's 2012 April Quarterly Report that discloses a disbursement from
3 the Committee to Zellner on February 29, 2012, described as "airfare reimbursement."
4 Compl. at 2; *see also* 2012 April Quarterly Report.
5
- 6 • Zellner made a contribution to a local campaign committee, Maureen May-Grimm for
7 Assembly, on May 5, 2012, as displayed in the relevant disclosure report that lists
8 Zellner's occupation and employer as "political coordinator" for "SEIU/WI Jobs Now."
9 Compl. at 2; *id.*, Ex. 5.

10 Based on these documents, the Complaint alleges that Zellner was working for the Wall
11 Committee at the same time that she was working for Wisconsin Jobs Now, and therefore Wall
12 and his Committee accepted a prohibited contribution from SEIU and Wisconsin Jobs Now in
13 the form of Zellner's campaign management services. Compl. at 1. Complainant observes that
14 the Wall Committee apparently did not pay Zellner for six months after she began work for them
15 — from October 2011 to April 2012¹ — which suggests that Zellner's salary was being paid by
16 Wisconsin Jobs Now and SEIU during that period. *Id.* at 2, 4. Complainant also alleges that,
17 following an August 5, 2012, newspaper article about these allegations, the Wall Committee
18 removed Zellner's name from its past press releases "to eliminate evidence of this issue." *Id.*
19 at 3.

20 The Complaint further asserts that "serious and legitimate questions also arise over
21 potential illegal coordination between the two groups," because "Zellner's longstanding
22 involvement with Wisconsin Jobs Now! protests make it highly likely that she and Wall
23 campaign individuals were aware and coordinating Wisconsin Jobs Now! protests" directed at

¹ According to its disclosure reports, the Wall Committee's first payroll disbursement to Zellner was made on April 1, 2012. *See* 2012 July Quarterly Report.

1 Wall's opponent. *Id.* The Complaint does not articulate any additional factual basis for this
2 conclusion, but asserts that "[f]urther investigation is required."² *Id.*

3 Zellner, Wall, and the Committee filed a joint Response, including an affidavit by
4 Zellner, in which they unequivocally deny the allegations and explain the apparent discrepancies
5 in Zellner's employment dates:

- 6 • The Wall Committee's original 2011 Year-End Report (filed January 31, 2012)
7 disclosing Zellner's October 3, 2011, contribution listed her occupation and employer as
8 "Information Requested." When the Committee filed an Amended 2011 Year-End
9 Report on April 17, 2012, it supplemented the information that was missing from the
10 original report, including Zellner's occupation and employer — which, as of April 17,
11 2012, was the Campaign Manager of the Wall Committee. Wall Committee Resp. at 2
12 (Nov. 25, 2012); *see also* 2011 Year-End Reports.
- 13
14 • The Wall Committee's computer program retroactively populates the "contact person"
15 information on all press releases published to its website, so that a press release always
16 lists contact information that is current as of the date it is accessed on the website. Wall
17 Committee Resp., Ex. C.
- 18
19 • Zellner requested and received vacation time from Wisconsin Jobs Now to attend a
20 political training event in Washington, D.C., on February 29, 2012. The Wall Committee
21 reimbursed her for attending this event because she started with the Committee less than
22 a week later. *Id.* at 2.
- 23
24 • Zellner did not provide her occupation and employer information to Maureen May-
25 Grimm for Assembly. The Wall Committee suggests that Maureen May-Grimm for
26 Assembly assumed, without confirming, that Zellner was still working for her previous
27 employer and thus listed that information in connection with her May 5, 2012,
28 contribution. *Id.* at 1.

29 Wisconsin Jobs Now and SEIU also submitted a joint Response denying the allegations.
30 The Response echoes the Wall Committee's explanation concerning Zellner's February 29,
31 2012, training event, asserting that none of the expenses for this trip were paid by Wisconsin

² Complainant also filed a Supplemental Complaint alleging that, during a television news segment, SEIU and Wisconsin Jobs Now admitted that Zellner was on their payroll until the end of March 2012. Supp. Compl. at 1. (Oct. 24, 2012). The cited television broadcast, however, references only an e-mail from Wisconsin Jobs Now stating that Zellner was on its payroll until March 4, 2012. *Id.*, Ex. A. The Supplemental Complaint also attaches seven news articles about the allegations, suggesting that "[t]here may be valuable information admitted by Wall in the development of these stories," but does not provide any new information. *Id.* at 1.

1 Jobs Now, and that the disclosure report describes this disbursement as a “reimbursement,” not a
2 “payroll” expense. Wisconsin Jobs Now/SEIU Resp. at 3; Lauer Decl. ¶ 8. The Response also
3 explains that, after Zellner notified Lauer that she would be leaving for the Wall Committee, he
4 ensured that she would not work on any activities that would impact Wall’s congressional race
5 and prohibited her participation in strategy meetings regarding that congressional district.
6 Wisconsin Jobs Now/SEIU Resp. at 2; Lauer Decl. ¶ 7. Zellner thus spent her remaining time at
7 Wisconsin Jobs Now working on a training conference for Wisconsin Jobs Now’s staff and
8 volunteers called the 99% Summit. *Id.* In sum, the Response asserts that Zellner performed no
9 work for the Wall Committee while she was employed by Wisconsin Jobs Now and performed
10 no work for Wisconsin Jobs Now after she left employment there on March 4, 2012. Wisconsin
11 Jobs Now/SEIU Resp. at 1; *id.*, Ex. A.

12 B. Legal Analysis

13 A contribution is any gift, subscription, loan, advance, or anything of value made by any
14 person for the purpose of influencing any election for federal office. 2 U.S.C. § 431(8)(a)(i).
15 Commission regulations define “anything of value” to include in-kind contributions: the
16 provision of goods or services without charge or at a charge that is less than the usual and normal
17 charge. 11 C.F.R. § 100.52(d)(1). It is unlawful for any corporation or labor organization to
18 make a contribution in connection with any election in any federal office, and unlawful for any
19 political committee to knowingly accept such a contribution. 2 U.S.C. § 441b(a).

20 1. Campaign Management Services

21 The Federal Election Campaign Act of 1971, as amended (the “Act”) specifically
22 includes in the definition of “contribution” the payment by any person of compensation for the
23 personal services of another person that are rendered to a political committee without charge for

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1 any purpose. 2 U.S.C. § 431(8)(a)(ii). Accordingly, if SEIU or Wisconsin Jobs Now
2 compensated Zellner to serve as the Wall Committee's campaign manager, the Respondents
3 would have violated the Act's prohibition on corporate and labor organization contributions. *See*
4 *id.* § 441b(a).

5 Although the information provided with the Complaint suggests that Zellner's time with
6 Wisconsin Jobs Now and the Wall Committee overlapped, implying that Zellner was being
7 compensated by SEIU or Wisconsin Jobs Now for her work with the Wall Committee, the full
8 record rebuts that. First, Zellner's employment with the Wall Committee was not listed on the
9 Committee's 2011 Year-End Report filed January 31, 2012; instead, it only appeared on the
10 amended report filed April 17, 2012, at which point she was, in fact, working for the Committee.
11 Second, the press releases attached to the Complaint appear to have been accessed and printed
12 from the Wall Committee's website on September 25, 2012. *See* Compl., Exs. 9, 10. Because
13 Zellner was employed by the Committee on that date, and because the Committee's computer
14 program retroactively populates the contact information to be current as of the date accessed, her
15 contact information retroactively appears on all of the attached press releases. Wall Committee
16 Resp. at 2; *id.*, Ex. C. Third, the Wall Committee's disbursement to Zellner for the February 29,
17 2012, trip to Washington, D.C., constituted reimbursement for a training that largely benefitted
18 the Wall Committee; it was not a payroll disbursement, and accordingly does not evidence that
19 the Wall Committee employed her on that date. *Id.* at 2. Finally, the listing of Zellner's
20 employer as Wisconsin Jobs Now/SEIU in connection with her May 5, 2012, contribution
21 appears to be a simple mistaken assumption on the part of Maureen May-Grimm for Assembly.
22 *Id.* at 1.

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When coupled with the information presented in the Complaint, the information provided by the Responses, including sworn statements, adequately resolves any apparent overlap between Zellner's employment:

Table 1. Timeline of Zellner's Employment.

Date	Event/Document
10/03/11	Zellner makes a contribution to the Wall Committee; 2011 Year-End Report lists her occupation and employer as "Information Requested"
01/05/12	Zellner organizes a protest sponsored by Wisconsin Jobs Now
02/29/12	Zellner attends training in Washington, D.C., for which she is reimbursed by the Wall Committee
03/04/12	Zellner leaves her employment at Wisconsin Jobs Now/SEIU
03/05/12	Zellner begins her employment at the Wall Committee
04/01/12	Zellner receives her first payroll disbursement from the Wall Committee
05/05/12	Zellner makes a contribution to Maureen May-Grimm for Assembly; disclosure form mistakenly lists her former occupation/employer
09/25/12	Complainant accesses Wall Committee press releases dated 10/05/11, 01/18/12, 02/02/12, 02/14/12, and 02/29/12, all of which list Zellner as point of contact

It thus appears that the Wall Committee paid Zellner within 30 days of her beginning work there (from March 5, 2012, to April 1, 2012), rather than the six months alleged in the Complaint. Furthermore, the fact that the Complainant accessed the Wall Committee's press releases on September 25, 2012, belies the allegation that the Committee removed Zellner's name from the press releases following an August 5, 2012, newspaper article "to eliminate evidence."

The available information Respondents provide amply supports the Respondents' position that Wisconsin Jobs Now or SEIU did not employ Zellner while she worked for the Wall Committee. Nor was there any information that either Wisconsin Jobs Now or SEIU compensated Zellner for her service as the Wall Committee's campaign manager. Accordingly, the Commission found no reason to believe that Wisconsin Jobs Now or SEIU made, and that Zellner, Wall, or the Wall Committee accepted, a prohibited contribution in violation of 2 U.S.C. § 441b(a).

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2. Coordinated Expenditures

Expenditures made by any person in cooperation, consultation, or concert with, or at the request or suggestion of a candidate, the candidate's authorized political committee, or their agents, are a contribution to such candidate. 2 U.S.C. § 441a(a)(7)(B)(i); 11 C.F.R. §§ 109.20(b), 109.21. Accordingly, if Wisconsin Jobs Now coordinated its protests with the Wall Committee, as Complainant suggests, Respondents would have violated the Act's prohibition on corporate contributions. *See* 2 U.S.C. § 441b(a).

The Complaint fails, however, to allege a specific incident of coordination. Instead, it surmises that Zellner likely facilitated the coordination of protests between Wisconsin Jobs Now and the Wall Committee based on her association with each entity. There is no available information to suggest coordination in this matter. Accordingly, given the lack of any information suggesting that Wisconsin Jobs Now made an expenditure in cooperation, consultation, or concert with, or at the request or suggestion of Wall or the Wall Committee, the Commission found no reason to believe that Wisconsin Jobs Now made or the Wall Committee accepted a prohibited contribution in violation of 2 U.S.C. § 441b(a).

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